Office - Supreme Court, U. S.
FILED
SEP 16 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

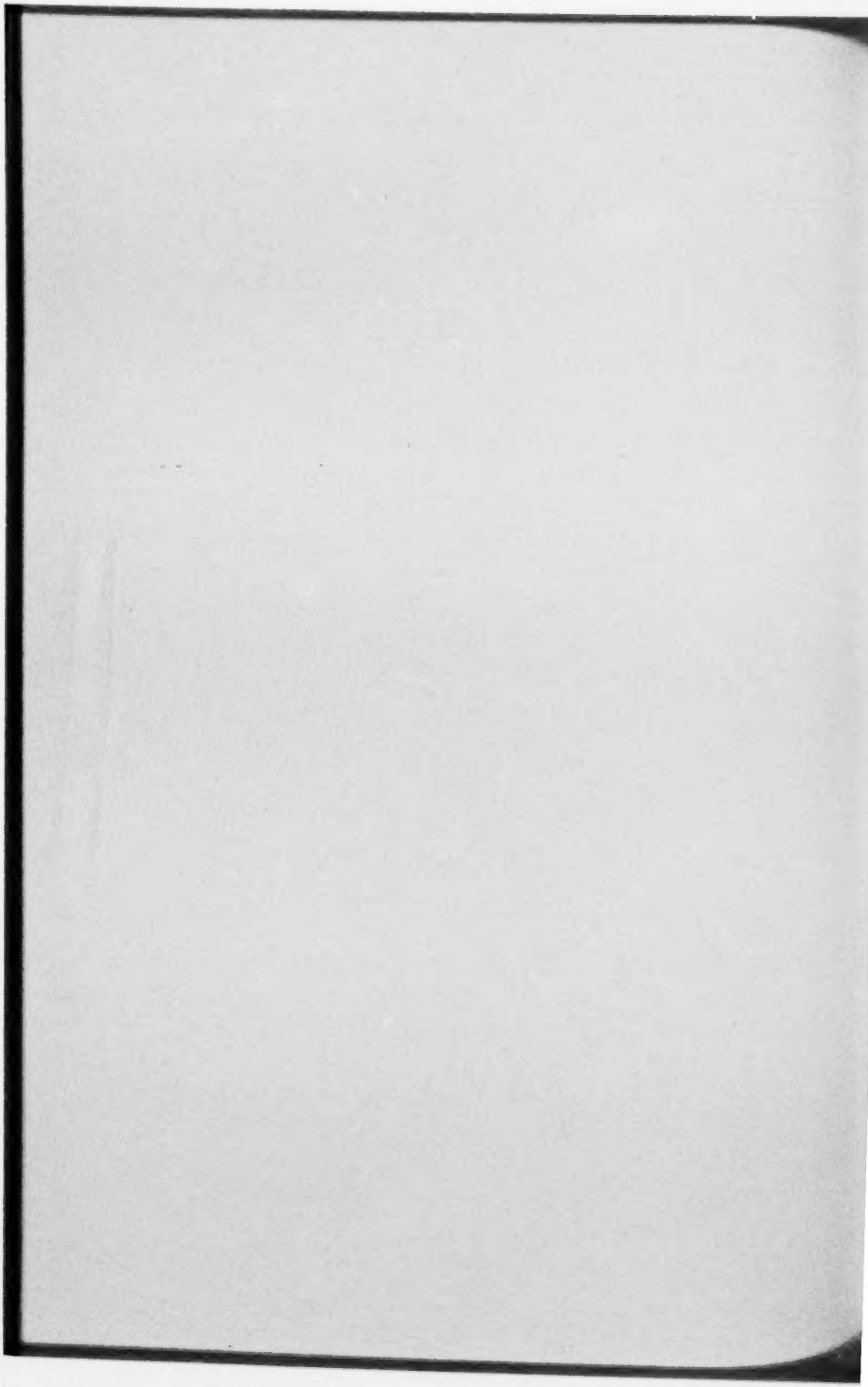
OCTOBER TERM, 1940.

EDWARD WILLIAMS,
Petitioner,
vs.
JOHN J. GOLDEN, Marshal, City of St. Louis,
Respondent.
No. 303.

PETITIONER'S REPLY BRIEF.

ROBERT W. HALL,
J. A. GOCHENOUR,
Counsel for Petitioner.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.



INDEX.

Page

I. As to the jurisdiction of this court..... 1

II. As to the argument of respondent that the cases cited by petitioner are not applicable..... 4

Cases Cited.

Cantwell v. State of Conn., 60 Supreme Court 900, 84 L. E. 836..... 4

Puget Sound v. King, 264 U. S. 22..... 3

Southern Railway Co. v. Clift, 260 U. S. 316..... 3

State v. Duestrow, 39 S. W. 266, 137 Mo. 44..... 2

Statute Cited.

Missouri Constitution, Sec. 3 of Art. VI..... 3

Missouri Constitution, Art. III..... 3

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

EDWARD WILLIAMS,
Petitioner,
vs.
JOHN J. GOLDEN, Marshal, City of St. Louis,
Respondent.
No. 303.

PETITIONER'S REPLY BRIEF.

I.

The respondent, in his brief, has questioned the jurisdiction of this Court in this case.

It is the respondent's contention that a motion should have been filed to transfer this cause from Division No. 2 of the Supreme Court of the State of Missouri to the court en banc. Respondent admits, however, that the Supreme Court of the State of Missouri is the highest court in the state.

Respondent's brief does not state that a final judgment in Division No. 2 of the Supreme Court is not a final judgment of the highest court in the state. Final judgment of the highest court in the state is the only statutory requirement for jurisdiction of this court.

The contention that a motion to transfer to court en banc should have been filed raises the question as to whether the court en banc is a superior court to Division No. 2 of the same court. The Missouri Supreme Court itself has definitely stated that a division of the court is not inferior to the court en banc. We quote from **State v. Duestrow,** 39 S. W. 266, 137 Mo. 44, as follows:

> "By the original Constitution the Supreme Court has superintending control over inferior courts only. But a division cannot be said to be inferior to the court. The judgment of a division has the same force and effect as the judgment of the court. Neither the subject matter of the suit, the amount in dispute, nor the question involved, distinguishes the jurisdiction of the court from that of a division. The court and the divisions therefore have concurrent jurisdiction in civil matters, and Division 2 has exclusive jurisdiction in criminal cases. The divisions are not, therefore, inferior courts, within the meaning of section 3 of article 6 of the Constitution, which gives the Supreme Court superintending control over inferior courts. Nor is such power of control inherent in the court. The highest courts of this country do not represent the sovereignty, as formerly did the court of king's bench in England, in which the inherent power to control all inferior courts resided. In this country the superintending power of one court over another, if it exists at all, does so by virtue of constitutional or statutory authority. The power of supervision resides in the Supreme Court of Missouri only by virtue of the sovereign authority of the people, expressed in their constitution. High, Extr. Rem., c. 12. No power is given the court to control in any respect the disposi-

> tion of criminal causes or matters pertaining to them, but all laws relating to practice in the Supreme Court, as well as the rules of the Supreme Court, 'as far as they may be applicable thereto,' shall apply to their disposition."

Under this decision of the Missouri Supreme Court a motion to transfer to the court en banc amounts to the same as a motion for rehearing, and this Court has ruled that the filing of a motion for rehearing in the highest court of the state is not a necessary condition precedent for review by this Court. **Puget Sound v. King,** 264 U. S. 22; **Southern Railway Co. v. Clift,** 260 U. S. 316.

As cited in respondent's brief, fifteen days time is allowed to transfer a cause to the court en banc. This time expired May 20, 1940, and the judgment of Division No. 2 became final on that date.

Under this state of facts and the law applicable thereto it seems that there is no foundation for respondent's contention.

Petitioner also wishes to call the Court's attention to the fact that this cause, a habeas corpus action, originated in the Supreme Court of the State of Missouri under Section 3 of Article VI of the Missouri Constitution. In the same amendment of 1890 pertaining to the powers of the Supreme Court as cited by the respondent, there is found in Article III the following sentence:

> "Each division shall have authority to issue the original writs and exercise the powers enumerated in section 3 of article 6 of the Constitution."

Under this constitutional provision, a cause of this nature is fully determined by the division of the court that renders judgment therein.

II.

The argument of the respondent that the cases cited by the petitioner are not applicable, as they deal only with the religious question, seems untenable.

In the case of **Cantwell v. State of Conn.**, 60 Supreme Court 900, 84 L. E. 836, discussed in detail by the respondent, the statute as cited therein is analogous to the city ordinance in this case. In this Court's decision of the Cantwell case it is set forth in detail the limits within which a statute or ordinance of this nature may be constitutional. It is our view that the ordinance in question in this case does not come within these limits.

It is hardly conceivable that the ordinance in question in this case cannot be measured by the standard as set down in the Cantwell case, because the petitioner in the Cantwell case was convicted of soliciting for a religious purpose, while the petitioner in the present case faces the charge of soliciting for a charitable, patriotic or philanthropic purpose.

For us it is difficult to see how a discriminating standard can be set that would allow a conviction in the present case. The Fourteenth Amendment sets up no classification and it is difficult to see the basis for declaring a statute or ordinance unconstitutional as to one person or class and constitutional as to all others enumerated therein. The ordinance might just as well permit all people wearing a black necktie to solicit and prohibit all wearing a white necktie.

In consideration of the foregoing premises, the petitioner respectfully submits that the cause is one calling for the exercise by this Court of their supervisory powers and orders that the errors of the Supreme Court of the State

of Missouri be reviewed and that to this end a writ of certiorari be granted and this Court should review the decision of the Supreme Court of Missouri in this matter and finally reverse it.

ROBERT W. HALL,
J. A. GOCHENOUR,
Counsel for Petitioner.